

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

HON. JOHN R. DITSWORTH

CLERK OF THE COURT
P. Noell
Deputy

000387734900
IN RE THE MATTER OF
JOEL NORMAN BRODY

FILED: 07/28/2005

WILLIAM D BISHOP

AND

GABRIELA BRODY

YVONNE YRAGUI

ROLAND ARROYO
AG-CHILD SUPPORT-SOUTH
CENTRAL OFFICE

MINUTE ENTRY

This matter having been taken under advisement at the conclusion of the Trial held on July 11, 2005 in this Division,

LET THE RECORD REFLECT that the parties have entered into a significant Rule 80(d) agreement on the record. They utilized Dr. McPhee's recommendations and Petitioner/Father's proposed Parenting Plan as the basis for their agreement.

Two sections of the proposed Parenting Plan were modified on the record. They were the agreement for Spring and Fall breaks:

Spring Break. So long as Spring break does not exceed one week, Mother shall have Monday through Friday of that break in even numbered years and Father shall have Monday through Friday of that break in odd numbered years.

Fall Break. So long as Fall break does not exceed one week, Father shall have Monday through Friday of that break in even numbered years and Mother shall Monday through Friday of that break in odd numbered years.

The following issues were not stipulated to in the Rule 80(d) agreement:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

- Should Custody be joint or sole?
- Should Mother be entitled to wake her child at 4:00 am to be transferred to a babysitter's home so she can go to work as a baker's assistant during her parenting time?
- Should Summer parenting time start in 2005 or 2006?
- Should there be a care provider of choice provision in the agreement?
- How should Thanksgiving be divided?
- How should Christmas be divided?
- Should Mother have Easter every year?
- How to allot the three day weekends?
- How to divide the costs of counseling?

The parties have one child in common: Jocelyn Brody, (DOB 6/18/95).

In determining what is in the best interests of the child, the Court has considered the statutory factors enumerated in A.R.S. § 25-403A as follows:

The Statute provides:

25-403. Custody; drug offenses; best interests of child; joint custody; domestic violence; modification of decree; fees

- A. The Court shall determine custody, either originally or on petition for modification, in accordance with the best interests of the child. The Court shall consider all relevant factors, including:
1. The wishes of the child's parent or parents as to custody.
 2. The wishes of the child as to the custodian.
 3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests.
 4. The child's adjustment to home, school and community.
 5. The mental and physical health of all individuals involved.
 6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.
 7. Whether one parent, both parents or neither parent has provided primary care of the child.
 8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

9. Whether a parent has complied with chapter 3, article 5 of this title.
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

THE COURT FINDS AS FOLLOWS:

1. The wishes of the child's parent or parents as to custody.

In this case, Mother desires joint custody with Father having final decision making authority. Father is requesting sole custody. Their positions are polar opposite as to whether or not they can co-parent. Dr. McPhee testified that during the evaluation stage of this case, Mother was not able to list a single parenting skill of Father. Dr. McPhee concludes that Father has a significant advantage over Mother in demonstrated parenting capacity. (Page 27.) This would indicate an inability for the parents to co-parent in the future.

2. The wishes of the child as to the custodian.

Dr. McPhee also concluded that the child was more comfortable and attached to her father and was fearful of displeasing her mother. (Dr. McPhee's Report) He also testified that the child was fearful of retaliation by her mother. This was expressed to Dr. McPhee and to Kathy Miholich, a therapist the Doctor engaged to perform home visits. This section favors Father.

3. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests.

The child has a younger step-sibling at Father's home. She is quite attached to that child. Her mother's home is quite close to extended family from her mother's side. This factor is evenly divided.

4. The child's adjustment to home, school and community.

The Court heard from Dr. McPhee on two areas which are relevant to this factor:

1. He indicated that Mother had previously been admonished in court because of issues with school absences while the child was in her care. As of the date of Trial, Mother still has not addressed this issue. The child

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

expressed to Dr. McPhee that she has to wake herself up at 6:00 in the morning to prepare for school. Her mother wakes up at 7:00. This was cited at page 21.

2. He also testified that at Mother's home, the child is treated as an adult and "parents her mother." However, at Father's home, she is just a little girl and is allowed to remain so. Mother has an emotional dependency on the child. (Testimony of Dr. McPhee.) This factor strongly favors Father.

5. The mental and physical health of all individuals involved.

Child reported excessive instances of corporal punishment at mother's home. (Statement of the child to Kathy Miholich) She told the social worker that she would be in big trouble if her mother found out that she said anything good about her father or bad about her mother. (Dr. McPhee's Report). Dr. McPhee concludes that Mother has significant deficits as a parent. (Page 26). Dr. McPhee also reported that although Mother has claimed to be the victim of domestic violence, an examination of the collateral sources and discussions with the Father's therapists clearly show that she in fact was the batterer and not the battered. This factor favors Father.

6. Which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent.

Based on the testimony regarding the two parents, it appears to the Court that Father has a more structured and organized life. He is fully employed and works from his home. Mother does have a history of chronic unemployment. (Testimony of Dr. McPhee, Father and Mother) This factor favors Father.

7. Whether one parent, both parents, or neither parent has provided primary care of the child.

Mother has been the primary care provider. This factor favors Mother.

8. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody. (**NOT APPLICABLE**)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

9. Whether a parent has complied with chapter 3, article 5 of this title. (**NOT APPLICABLE**)
10. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02. (**NOT APPLICABLE**)

CUSTODY JURISDICTIONAL STATEMENT

THE COURT FINDS that the minor child who is the subject of this action lived in Arizona with a parent, or a person acting as a parent, for at least six consecutive months or more prior to the commencement of this action, such that Arizona is the home state of the child vested with jurisdiction 25-1031(A)(1) to make a child custody determination pursuant to A.R.S.

Based on the Court's findings as stated above,

THE COURT FINDS that it is in the best interests of the parties' minor child to award sole custody of the minor child to Petitioner/Father, Joel Brody.

IT IS THEREFORE ORDERED awarding Petitioner/Father, Joel Brody, sole custody of the parties' minor child, Jocelyn Brody, (DOB 6/18/95).

With regard to the issues of parenting time,

LET THE RECORD REFLECT that Mother has current employment as a baker's assistant. This requires her to wake the child very early and transport her to a family member's home so that she may report to work before 5:00 am. This will happen during Mother's parenting time in the summer.

THE COURT FINDS that this is reasonable. Children are adaptable and resilient. The child will gain from exposure to her mother's family (babysitters) and from the knowledge that her mother is working.

IT IS THEREFORE ORDERED that Respondent/Mother may awaken the child at 4:00 a.m. to transfer her to the babysitter's home during her parenting time when she is scheduled to work.

With regard to summer parenting time,

IT IS ORDERED that summer parenting time shall start in 2005.

With regard to the care provider of choice provision in the proposed Parenting Plan,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 1996-007346

07/12/2005

IT IS ORDERED striking the care provider of choice provision in the proposed Parenting Plan.

With regard to the Thanksgiving holiday,

IT IS ORDERED that the Thanksgiving holiday shall be from Wednesday at 3:00 p.m. until Friday at 5:00 p.m. The holiday shall be alternated, with Petitioner/Father having odd years and Respondent/Mother having even years. The regular weekend schedule shall apply.

With regard to the Christmas holiday,

The Court adopts the proposal of Father as set forth in the proposed Parenting Plan.

With regard to the Easter holiday,

IT IS ORDERED that the parties shall alternate the Easter holiday with Petitioner/Father having even years and Respondent/Mother having odd years.

With regard to three day weekends,

The Court adopts the proposal of Father as set forth in the proposed Parenting Plan.

With regard to the costs of counseling,

IT IS ORDERED that the costs of counseling shall be shared by the parties in proportion to their incomes.

FORMAL ORDER

IT IS ORDERED that counsel for Petitioner/Father shall prepare and submit a formal written Order incorporating this Court's findings and orders with the Rule 80(d) agreement for the Court's signature no later than **July 29, 2005 at 5:00 p.m.**

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/ssc/sschome.html>.